

## **REMARKS**

Reconsideration of this application is respectfully requested. Claims 33-42 as amended are presented for consideration.

### ***Status of the Claims***

Concurrently with this response, applicant has amended the claims to endeavor to expedite the prosecution thereof, and to focus on the subject matter of present interest herein. Accordingly, the present amendment further revises claim 33 to define that the PTK7 polypeptide comprises or consists the amino acid sequence of SEQ ID NO:1, and to delete the wording regarding a derivative or fragment of PTK7. This amendment is believed to be favorably responsive to the examiner's rejection under 35 U.S.C. §112, paragraph 1, and particularly, the comments at the beginning of that rejection.

Claim 33 has also been amended to define that the biological sample under test in the claimed method is selected from breast, pancreatic, lung, bladder, kidney or bone tissue. Basis for this amendment may be found in the description, for example on page 3 and page 20 of the PCT application as published. This amendment is believed to be responsive to the rejection of the claims under 35 U.S.C. §102 under both Hess-Stumpp and Mack. Further discussion of this distinction will be presented in the discussion of the rejections in question, appearing hereinbelow.

### ***Claim Rejections – 35 USC §112***

Claims 33-42 have been rejected under 35 U.S.C. §112, first paragraph, as lacking written descriptive support in the specification. As discussed above, Applicant has amended primary Claim 33 to define that the PTK7 polypeptide comprises or consists of the amino acid sequence of SEQ ID NO: 1. The claim no longer encompasses derivative having at least 70% identity to SEQ ID NO: 1, or a fragment of at least 100 amino acids in length having at least 70% homology over the length of the fragment to SEQ ID NO: 1, and as this latter language appears to be objectionable to the examiner, its deletion should overcome the present rejection. Accordingly, withdrawal of this rejection is believed to be in order and is requested.

### ***Claim Rejection – 35 USC §102***

Claims 33-42 have been rejected under 35 USC §102(e) as anticipated by Hess-Stumpp *et al.* (US 6,780,594). As this rejection may pertain to the claims particularly as presently amended, it is traversed.

Hess-Stumpp *et al.* relates to a method of diagnosing endometriosis and does not disclose or suggest a method of screening and/or diagnosing breast, pancreatic, lung, bladder or kidney cancer or osteosarcoma as defined in the claims as amended. As the claims as amended are focused on the examination and screening of biological samples taken from the particular compartments in object for the detection of the carcinomas, this would conclusively distinguish the disclosure of Hess-Stumpp.

As stated in Applicant's discussion of this reference in the response to the prior office action, the activity of the sequences disclosed in Hess-Stumpp *et al.* as to endometriosis is not a predictor of like activity with respect to the carcinomas specifically recited herein, particularly as focused on the particular biological tissues. Accordingly, the method according to the present invention is not anticipated by Hess-Stumpp *et al.*, and withdrawal of this ground of rejection is believed to be in order and is requested.

Claims 33-42 have also been rejected under 35 USC §102(e) as anticipated by Mack *et al.* (US 7,189,507). As this rejection may pertain to the claims particularly as presently amended, it is traversed.

Mack *et al.* disclose methods for diagnosing ovarian cancer comprising determining the expression of a gene as set forth in Tables 1-20 of the reference, wherein PTK7 is listed as one of hundreds of other gene sequences. Mack *et al.* do not disclose or suggest a method of screening and/or diagnosis of breast, pancreatic, lung, bladder or kidney cancer or osteosarcoma in a subject, as defined by the claims particularly as amended herein. Applicant reiterates and incorporates herein, the remarks presented as to Hess-Stumpp *et al.*, above. The presently claimed method of screening is directed to biological samples taken from the compartments where the carcinomas in object are suspected, and thus delimits and distinguishes from the teachings of Mack *et al.*

Accordingly, the rejection based on Mack *et al.* as it is applied to the present claims, is believed to be overcome, and reconsideration and withdrawal thereof is

requested.

### ***Conclusion***

To summarize, therefore, the features of the present method are believed to be more clearly recited in the claims as amended and presented for consideration, and are likewise believed to clearly distinguish the references applied in rejection. Applicants submit that patentable subject matter is clearly defined and that all grounds of rejection have been overcome. Should the Examiner believe that other issues remain for resolution, she is invited to call the undersigned at the number listed below.

In view of the above and foregoing, reconsideration and withdrawal of the outstanding grounds of objection and rejection and early allowance of the claims as amended is believed to be in order and is courteously solicited.

Respectfully submitted,

/David A. Jackson/

DAVID A. JACKSON

Attorney for Applicants

Registration No. 26,742

KLAUBER & JACKSON LLC  
411 Hackensack Ave., 4th Floor  
Hackensack, NJ 07601  
Phone: 201-487-5800  
Dated: October 10, 2009